

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

TODD MICHAEL TOMASELLA,

Plaintiff,

V.

DIVISION OF CHILD SUPPORT,  
ET AL,

Defendants.

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No. 3:19-cv-771-N-BN

**NOTICE OF DEFICIENCY AND ORDER**

Plaintiff Todd Michael Tomasella f/k/a Todd Micha-El of the Family Tomasella filed a *pro se* civil rights complaint implicating state court child support proceedings. See Dkt. No. 2. He neither paid the \$400 filing fee nor moved for leave to proceed *in forma pauperis* (“IFP”). His action has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from United States District Judge David C. Godbey.

Tomasella must either pay the full filing fee or, if he so qualifies, complete in full, verify, and file an IFP motion by **April 29, 2019**. Failure to do either will result in a recommendation that his complaint be dismissed for failure to prosecute and obey an order of the Court under Federal Rule of Civil Procedure 41(b).

The standards governing IFP motions are set forth in 28 U.S.C. § 1915(a). The district court may authorize the commencement of a civil action without the prepayment of fees or costs “by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such

fees or give security therefor.” 28 U.S.C. § 1915(a)(1). The Court must then examine the financial condition of the applicant in order to determine whether the payment of fees would “cause undue financial hardship.” *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). “This entails a review of other demands on individual plaintiffs’ financial resources, including whether the expenses are discretionary or mandatory.” *Id.*

And, while “[t]he term ‘undue financial hardship’ is not defined and, therefore, is a flexible concept[,] ... a pragmatic rule of thumb contemplates that undue financial hardship results when prepayment of fees or costs would result in the applicant’s inability to pay for the ‘necessities of life.’” *Walker v. Univ. of Tex. Med. Branch*, No. 1:08-CV-417, 2008 WL 4873733, at \*1 (E.D. Tex. Oct. 30, 2008) (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)); *see also Williams v. Louisiana*, Civ. A. No. 14-00154-BAJ-EWD, 2017 WL 3124332, at \*1 (M.D. La. Apr. 14, 2017) (noting that the applicable standard “requires a showing of more than an inconvenience to the applicant” (citations omitted)).

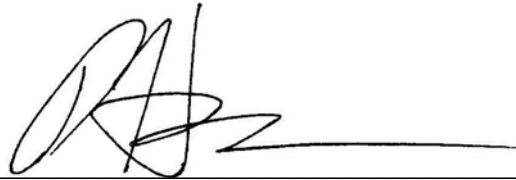
“[W]hether the litigant is ‘unable to pay’ the costs [associated with initiating a lawsuit also] ... depend[s] in part on [the] litigant’s actual ability to get funds from a spouse, a parent, an adult sibling, or other next friend.” *Williams v. Spencer*, 455 F. Supp. 205, 209 (D. Md. 1978); *see Fridman v. City of New York*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002) (“In assessing an application to proceed *in forma pauperis*, a court may consider the resources that the applicant has or can get from those who ordinarily provide the applicant with the necessities of life, such as from a spouse, parent, adult sibling or other next friend.” (citations and internal quotation marks omitted)); *accord*

*Pisano v. Astrue*, No. 11-30269-KPN, 2012 WL 79188, at \*2 (D. Mass. Jan. 10, 2012) (collecting cases).

And a financial affidavit that is either “incomplete” or “internally inconsistent” is insufficient to find that a movant qualifies for leave to proceed IFP. *Muhammad v. La. Attorney Disciplinary Bd.*, Civ. A. No. 09-3431, 2009 WL 3150041, at \*2 (E.D. La. Sept. 25, 2009) (citing *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976) (“[W]here the in forma pauperis affidavit is sufficient on its face to demonstrate economic eligibility, the court should first docket the case and then proceed to the question ... of whether the asserted claim is frivolous or malicious.”); collecting cases).

SO ORDERED.

DATED: March 29, 2019

A handwritten signature in black ink, appearing to be 'D. Horan', written over a horizontal line.

DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE